

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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YANKI TSHERING

Plaintiff,

08 CV 2777 (SJ) (RL)

v.

MEMORANDUM
AND ORDER

FAIRFIELD FINANCIAL MORTGAGE
GROUP, INC. and SHAW MORTGAGE
GROUP, INC.,

Defendants.

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A P P E A R A N C E S

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JOHNSON, Senior District Judge:

Presently before the Court is a Report and Recommendation issued by
Magistrate Judge Robert M. Levy on February 1, 2010 (“Report”) regarding Yanki
Tshering’s (“Plaintiff”) motion for default judgment (“Motion”).

Plaintiff brought this action in July 2008 seeking a judgment that a \$960,000.00 mortgage dated July 21, 2006 (“Mortgage”) was procured by fraud and violated federal law. (Compl. ¶ 8). Plaintiff alleged that Fairfield Financial Mortgage Group, Inc. (“Fairfield”) and Shaw Mortgage Group (“Shaw”) (collectively, “Defendants”) fraudulently induced her to enter the Mortgage, engaged in predatory lending in violation of the Truth in Lending Act (“TILA”), and were unjustly enriched at her expense. Following Defendants’ failure to appear or defend the action before this Court, the Clerk of Court noted the default and this Court referred the Motion to Magistrate Judge Levy for a report and recommendation.

A district court judge may designate a magistrate judge to hear and determine certain motions pending before the Court and to submit to the Court proposed findings of fact and a recommendation as to the disposition of the motion. See 28 U.S.C. § 636(b)(1). Within 10 days of service of the recommendation, any party may file written objections to the magistrate’s report. See id. The Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the report and recommendation to which no objections are addressed. See Thomas v. Arn, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections may waive the right to appeal the magistrate’s decision. See 28 U.S.C. § 636(b)(1); Small v. Sec’y of Health & Human Servs., 892 F.2d 15, 16 (2d Cir. 1989).

In this case, objections to the Report were due within 14 days of the February 1, 2010 decision, or at the latest by February 15, 2010. See Report at 9. No objections to the Report were filed with this Court.

The Report recommends that Plaintiff's claim for damages under TILA be dismissed as time-barred. Under TILA, a mortgagee must bring an action within one year of the alleged violation in order to recover money damages. See U.S.C. § 1640(e). The transaction at issue took place in July 21, 2006 and Plaintiff filed this action in July 11, 2008, almost two years later.

However, the Report finds meritorious Plaintiffs' state law claims for fraudulent inducement and recommends that the Mortgage be declared void and unenforceable under New York law. The Report notes that this Court has discretion to decline to exercise supplemental jurisdiction over the state law claims under 28 U.S.C. 1330, but recommends that this Court retain jurisdiction in the interest of judicial economy, convenience, fairness, and comity. See Purgess v. Sharrock, 33 F.3d 134, 138-39 (2d Cir. 1994).

Lastly, the Report recommends that this Court grant Plaintiff's request to hold her claims for monetary damages in abeyance pending a determination on her motion to rescind or void the mortgage and that she be given leave to submit supplemental documentation. See Report at 8.

Upon review of the recommendations, this Court adopts and affirms Magistrate Judge Levy's Report in its entirety.

SO ORDERED.

DATED: February 19, 2010 /s
Brooklyn, New York Sterling Johnson, Jr, U.S.D.J.